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Federal Communications Commission

DA 96-1992

FCC MAIL SECTION

DEC 11 10 38 AM '96
Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY)
In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-241
Table of Allotments,) RM-8928
FM Broadcast Stations.)
(Minden and Natchitoches,)
Louisiana))

NOTICE OF PROPOSED RULE MAKING

Adopted: November 29, 1996

Released: December 6, 1996

Comment Date: January 27, 1997

Reply Comment Date: February 11, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Ninety-Five Point Seven, Inc., assignee of Station KASO(FM)¹, Channel 239A², Minden, Louisiana, and Bundrick Communications, Inc. ("joint petitioners"), licensee of Station KZBL(FM), Channel 240A, Natchitoches, Louisiana, requesting the substitution of Channel 239C2 for Channel 239A at Minden, Louisiana, and modification of Station KASO(FM)'s authorization to specify the higher powered channel. In order to implement the upgrade at Minden, Louisiana, the joint petitioners also request the substitution of Channel 264A for Channel 240A at Natchitoches, Louisiana, and modification of Station KZBL(FM)'s license to reflect the alternate Class A channel.

2. We believe petitioner's proposal warrants consideration since it could enable Station KASO(FM) to expand its coverage area. Channel 239C2 and Channel 264A can be

¹ The application (File No. BALH-960517ED) for assignment of Station KASO(FM)'s license to Ninety-Five Point Seven, Inc. was granted on July 16, 1996.

² Station KASO(FM) has a outstanding one-step application (BPH-960830IC) requesting a co-channel upgrade from Channel 239A to Channel 239C3.

allotted to Minden and Natchitoches, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 239C2 can be allotted to Minden with a site restriction of 9.2 kilometers (5.7 miles) northwest to accommodate Station KASO(FM)'s upgrade.³ As proposed, Channel 264A can be allotted to Natchitoches at the transmitter site specified in Station KZBL(FM)'s license.⁴ We recognize that the allotment of Channel 264A to Natchitoches conflicts with the presently licensed operation of Station KRTX(FM), Channel 264C2, Jasper, Texas. However, the license of Station KRTX(FM) has been modified to specify Channel 264C at Winnie, Texas, as its new community of license and the station has been issued a construction permit (BMPH-960111LF) on the new channel at the new community of license. See 10 FCC Rcd 4952 (1995). We will serve a copy of this Notice on Station KRTX(FM).

3. As requested, we proposed to modify the license for Channel 239A at Minden to specify operation on Channel 239C2. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 239C2 at Minden or require petitioner to demonstrate the availability of an additional equivalent class channel.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Minden, Louisiana	239A	239C2
Natchitoches, Louisiana	240A, 247C3	247C3, 264A

5. IT IS ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making to Tichenor License Corporation, 100 Crescent Court, Suite 1777, Dallas, Texas, 75201 [licensee of Station KRTX(FM)].

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is

³ The coordinates for Channel 239C2 at Minden are North Latitude 32-39-06 and West Longitude 93-22-15.

⁴ The coordinates for Channel 264A at Natchitoches are North Latitude 31-48-18 and West Longitude 93-01-29.

required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before January 27, 1997, and reply comments on or before February 11, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William J. Pennington, III
Post Office Box 403
Westfield, Massachusetts 01086
(Counsel for joint petitioners)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.